



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
A. CLYDE FLACKBERT)

Appearances:

For Appellants: Ruben Kitay
Certified Public Accountant

For Respondent: Paul Petrozzi
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of A. Clyde Flackbert against a proposed assessment of additional personal income tax in the amount of \$465.30 for the year 1972.

Appeal of A. Clyde Flackbert

The sole issue for determination is whether appellant is entitled to a tax credit for income taxes paid to Arizona.

At all times relevant to this appeal, appellant was a California resident. Appellant's 1972 federal income tax return was audited by the Internal Revenue Service. Certain changes to appellant's federal income tax liability were made as a result of the audit. Thereafter, respondent was advised of the adjustments and made corresponding changes to appellant's state tax liability. In addition, respondent disallowed a \$385.00 tax credit claimed by appellant for personal income tax paid to Arizona. The credit arose from income tax withheld by the State of Arizona on wages paid to appellant for services performed in Arizona. Although appellant does not contest the state adjustments corresponding to the federal changes, he does object to the disallowance of the claimed tax credit.

Pursuant to section 17041 of the Revenue and Taxation Code, the entire taxable income of a California resident, from whatever source derived, is subject to tax. Under certain circumstances, a California resident may obtain a credit against his California tax liability for net income taxes paid to another state. Section 18001 of the Revenue and Taxation Code provides, in part:

Subject to the following conditions, residents shall be allowed a credit against the taxes imposed by this part for net income taxes imposed by and paid to another state on income taxable under this part:

(a) The credit shall be allowed only for taxes paid to the other state on income derived from sources within that state which is taxable under its laws irrespective of the residence or domicile of the recipient.

* * *

(b) The credit shall not be allowed if the other state allows residents of this state a credit against the taxes imposed by that state for taxes paid or payable under this part.

Appeal of A. Clyde Flackbert

The regulations interpreting section 18001 provide, in part:

Credit may not be allowed for taxes paid to a state which allows nonresidents credit against the taxes imposed by such state for taxes paid or payable to the state of residence. In such case credit should be obtained from the state imposing a tax upon residents of this State. (Cal. Admin. Code, tit. 18, reg. 18001(b), subd. (2).)

It is apparent that the statute and regulation prohibit the allowance of a credit to a California resident where the foreign state allows a credit against its tax for tax imposed by California on the same income. The purpose of this prohibition is to prevent the allowance of credits by both states at the same time. Since Arizona provides a credit for tax paid in California on the income taxed in Arizona (**Ariz. Rev. Stat. § '43.128 (b)**), appellant, a California resident, is not entitled to a tax credit for personal income tax paid to Arizona. (Appeal of Frank E. Tompkins, Cal. St. Bd. of Equal., Feb. 8, 1978.)

Appellant argues, however, that a delay by respondent in auditing appellant's return until it was too late to apply for the Arizona credit should bar respondent from assessing the tax. Respondent first contacted appellant concerning the credit on June 21, 1974. The notice of proposed assessment disallowing the credit was issued on August 6, 1975, and protested by appellant on October 1, 1975. Since Arizona law provides for a four-year period from the due date of the related return for filing a claim for **refund**, it is apparent that the limitation period had not expired. Thus, appellant's argument that respondent's dilatory actions prevented him from filing a timely claim with Arizona is untenable.

For these reasons, respondent's action in this matter must be sustained.

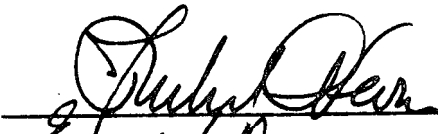


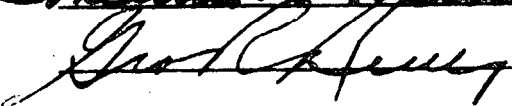
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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of A. Clyde Flackbert against a proposed assessment of additional personal income tax in the amount of \$465.30 for the year 1972, be and the same is hereby sustained.

Done at Sacramento, California, this 30th day of June , 1980, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member

_____, Member
_____, Member